

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CHRISTINE BREWER,

Plaintiff and Respondent,

v.

PREMIER GOLF PROPERTIES,

Defendant and Appellant.

D052617

(Super. Ct. No. GIE027293)

Appeal from an order of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Order vacated and remanded.

This is the third appeal arising out of the action filed by Christine Brewer, a waitress employed at the restaurant for Cottonwood Golf Club, against her employer, Premier Golf Properties, LP, dba Cottonwood Golf Club (Cottonwood). In the underlying action, the jury returned special verdicts in favor of Brewer, awarding her approximately \$25,000 for various violations of Labor Code provisions. The original judgment also included \$195,000 in punitive damages and the court found Brewer was

the prevailing party entitled to attorney fees and costs. In a series of rulings on a variety of posttrial motions, the trial court ordered (1) Brewer was entitled to a certain amount of attorney fees and costs, and (2) Brewer could accept a reduced punitive damages award of \$75,000 or Cottonwood would be entitled to a new trial on the ground of excessive damages.

Although Brewer submitted a proposed amended judgment (the May 21 draft) purportedly incorporating these rulings, Brewer's attorney subsequently sent a letter to the court that (1) manifested Brewer's consent to the reduced punitive damages award, (2) withdrew the May 21 draft amended judgment Brewer submitted two days earlier, and (3) submitted a different proposed amended judgment that reflected the reduced punitive damages award but failed to recalculate the total award (the May 23 draft). However, on June 6, 2007, the court signed and entered the May 21 draft as the final judgment.

Brewer subsequently discovered mathematical errors in the May 23 draft and, accordingly, submitted yet another proposed amended judgment (the June 25 draft) incorporating the court-ordered reduced punitive damages award and correcting the mathematical oversights contained in the May 23 draft. However, the court took no immediate action on the June 25 draft. On July 9, 2007, Cottonwood filed a notice of appeal.

Brewer thereafter moved for an order to correct the judgment signed and entered by the court on June 6, 2007, asserting the judgment contained clerical errors that could be corrected under Code of Civil Procedure section 473, subdivision (d), and seeking entry of a judgment employing the language of Brewer's June 25 draft. Cottonwood

opposed the motion, arguing (in part) that the perfecting of its appeal deprived the court of jurisdiction to alter its judgment and the action proposed by Brewer would materially alter the judgment on appeal. On December 19, 2007, the court granted Brewer's motion and entered an amended judgment employing the language of Brewer's June 25 draft, and Cottonwood filed the present appeal from that order and judgment.

In *Brewer v. Premier Golf Properties* (Dec. 3, 2008, D050686) ___ Cal.App.4th ___ (*Brewer I*)), this court determined the judgment, insofar as it included an award of punitive damages, was erroneous and required reversal, and ordered the trial court on remand to enter a new judgment striking the award of punitive damages. This court further determined the judgment, insofar as it contained an award of attorney fees, was also reversed and remanded with instructions to reconsider the award of attorney fees considering the opinion in *Brewer I*. (*Brewer I*, at p. 35.) Because the judgment that is the subject of the present appeal purports to be a "correction" of the judgment we vacated in *Brewer I*, any alleged error committed in connection with the order that is the subject of the present appeal is necessarily mooted by our decision in *Brewer I* vacating the underlying judgment and ordering entry of a new judgment.

DISPOSITION

To ensure clarity, it is ordered that any and all iterations of the judgment in the underlying action, including but not limited to the judgment below resulting from the corrections entered on December 19, 2007, are (1) reversed insofar as the judgment includes an award of punitive damages, with directions that on remand the trial court shall enter a new judgment striking any award of punitive damages; (2) reversed insofar

as the judgment includes an award of attorney fees, and on remand the trial court shall reconsider and enter a new award of attorney fees considering the opinion in *Brewer I*; and (3) in all other respects the judgment is affirmed. The parties shall bear their own costs on appeal.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.